



for March 1, 2011 to determine whether proper service had been effectuated in accordance with the Court's Order.

On February 11, 2011, the Plaintiffs filed their Emergency Motion for Extension of Time to Effect Service and to Continue Hearing [Docket No. 280]. The Court conducted a hearing on the Plaintiff's motion on February 23, 2011. At the conclusion of the hearing, the Court continued the matter to March 1, 2011. On March 1, 2011, the Plaintiffs advised the Court that Wilson Vukelich LLP had been properly served and that proof of service would be forthcoming. The Court stated that if service had been properly effected, it would grant Docket No. 280 and deny the motion to dismiss. The Court advised the Plaintiffs that evidence would be required.

On March 7, 2011, the Plaintiffs filed a "Return of Service" [Docket No. 286]. A copy of Docket No. 286 is attached as **Exhibit 1**.

On March 8, 2011, the Court held a hearing to consider whether Wilson Vukelich LLP had been properly served. The Plaintiffs offered no evidence and provided no testimony. Wilson Vukelich LLP offered a copy of **Exhibit 1** which was admitted into evidence by agreement. **Exhibit 1** reflects that a document was served on Marilyn Hsieh, an adult female, who is the receptionist at Wilson Vukelich LLP.

Wilson Vukelich LLP further provided the Court with (i) a copy of the applicable provisions of the Hague Service Convention (the "Convention"), (ii) the Ontario Rules of Civil Procedure governing service of process and (iii) case law regarding service under Canadian law.

Article 5 of the Convention provides that "[t]he Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either – (a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory . . . ."<sup>1</sup>

Service of process within the province of Ontario, Canada where the offices of Wilson Vukelich LLP are located is governed by Rule 16 of the Ontario Rules of Civil Procedure as promulgated under the *Courts of Justice Act*. Rule 16.01(1) provides that "[a]n originating process shall be served personally as provided in rule 16.02 . . . ." Rule 16.02(a) provides that "[w]here a document is to be served personally, the service shall be made, . . . (m) Partnership – on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; . . . ."

Wilson Vukelich LLP further provided the Court with Canadian case authority reflecting that with respect to service upon a corporation, serving a receptionist was insufficient.

Based on the record before the Court, the evidence and legal authorities presented and the arguments of counsel, the Court makes the following findings of fact and conclusions of law. To the extent that the Court made additional findings of fact and conclusions of law on the record in open court, they are incorporated pursuant to Bankruptcy Rule 7052.

1. The Court finds that Wilson Vukelich LLP is a partnership.

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<sup>1</sup> The Plaintiffs stated that they proceeded under article 5(a).

2. The Court finds that Marilyn Hsieh was served with a document.
3. The Court finds that Marilyn Hsieh is a receptionist at Wilson Vukelich LLP.
4. The Court finds that a receptionist is not a partner at nor is she a person at the principal place of business of Wilson Vukelich LLP who appears to be in control or management of the place of business
5. The Court finds that Marilyn Hsieh is not a partner at nor is she a person at the principal place of business of Wilson Vukelich LLP who appears to be in control or management of the place of business.
6. The Court finds that Wilson Vukelich LLP has not been properly served under Ontario law.
7. The Court finds that the Plaintiffs failed to comply with the Convention.
8. The Court finds that Wilson Vukelich LLP has not been properly served under the Federal Rules of Civil Procedure.
9. The Court finds that the Plaintiffs have failed to act reasonably in following the Court's orders and effecting service of process upon Wilson Vukelich LLP.
10. The Court finds that the motion to dismiss should be granted on the ground of insufficient service of process pursuant to FED. R. CIV. P. 12(b)(5).

Accordingly, it is **ORDERED THAT:**

1. Plaintiffs' Emergency Motion for Extension of Time to Effect Service and to Continue Hearing [Docket No. 280] is **GRANTED**.
2. Defendant Wilson Vukelich LLP's Motion to Dismiss [Docket No. 69] is **GRANTED**.
3. The Court's Order Regarding Motion to Dismiss Adversary Proceeding Filed by all Defendants Except Wilson Vukelich LLP entered January 13, 2011 [Docket No. 274] is modified to provide that all claims set forth in Column 1 of the Table of Claims that were to be remanded to state court now excludes all claims asserted against Wilson Vukelich LLP, which claims are **DISMISSED**.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2011.

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**THE HONORABLE JEFF BOHM,  
UNITED STATES BANKRUPTCY JUDGE**

**Approved:**

**Porter Hedges LLP**

A handwritten signature in black ink, appearing to read 'D.R. Jones', is written over a horizontal line. The signature is stylized and cursive.

David R. Jones

State Bar No. 00786001/S.D.Tex. No. 16082

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Houston, Texas 77002

(713) 226-6000

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**Counsel for Wilson Vukelich LLP**

**\* The Plaintiffs do not approve of the form  
or the substance**

# **EXHIBIT 1**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:	§	
	§	
SKYPORT GLOBAL	§	CASE NO. 08-36737-H4-11
COMMUNICATIONS, INC.,	§	
Debtor	§	
<hr/>		
JOANNE SCHERMERHORN, ET AL.,	§	
Plaintiffs	§	
	§	
v.	§	ADVERSARY NO. 10-03150
	§	
CENTURYTEL, INC. (A/K/A	§	
CENTURLINK), ET AL.,	§	
Defendants	§	

**RETURN OF SERVICE**

Attached for filing is Return of Service upon Wilson Vukelich LLP on February 28, 2011 from the Ministry of the Attorney General, Court Services Division, Central East Region, Ontario, Canada

Dated this 7<sup>th</sup> day of March, 2011.

Respectfully submitted,

McFALL, BREITBEIL & SMITH, P.C.

By: /s/ W. Steve Smith  
W. STEVE SMITH  
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ATTORNEY FOR PLAINTIFFS'

**EXHIBIT**

**1**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document is being served on the 7<sup>th</sup> day of March, 2011, on all of the following parties via regular first class mail, postage prepaid. Those ECF users registered in this case will receive electronic notice on March 7, 2011.

David R. Jones  
Elizabeth Freeman  
Porter & Hedges, LLP  
1000 Main Street, 36<sup>th</sup> Fl.  
Houston, TX 77002

/s/ W. Steve Smith

W. Steve Smith

Ministry of the  
Attorney General

Court Services Division  
Central East Region

1<sup>st</sup> Floor, 50 Eagle St. West  
Newmarket, ON L3Y 6B1

Telephone: 905 853-4801  
Fax: 905 853-4869

Ministère du  
Procureur général

Division des services aux tribunaux  
Région Centre-Est

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**CERTIFICATE  
ATTESTATION**

The undersigned has the honour to certify, in conformity with article 8 of the Convention,  
*L'autorité soussignée a l'honneur d'attester conformément à l'article 8 de la dite Convention.*

1. that the document has been served \*  
*1. que la demande a été servie*

the (date) - la (date) Monday 28<sup>th</sup> February 2011  
at (place, street, number) - à (localité, rue, numéro) 60 Columbia Way, Ste. 710, Markham, Ontario

- In one of the following methods authorized by article 5:  
*- dans une formes suivantes prévues à l'article 5:*

- ☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.  
*a) selon les formes légales (article 5, alinéa premier, lettre a) de la dite Convention*
- ☒ (b) in accordance with the following particular method:  
*b) selon la forme particulière suivante:* service on Marilyn HSIEN
- ☐ (c) by delivery to the addressee, who accepted it voluntarily.\*  
*c) par remise simple*

The documents referred to in the request have been delivered to:  
*Les documents mentionnés dans la demande ont été remis à:*

- (identity and description of person)
- (identité et qualité de la personne)*

Ms. Marilyn HSIEN - adult female

- relationship to the addressee (family, business or other):
- liens de parenté de subordination ou autres. Avec le destinataire de l'acte*

Receptionist at Wilson VUKELICH LLP

2) that the document has not been served, by reason of the following facts\*:

*2. que la demande n'a pas été servie, en raison des faits suivants:*

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses  
detailed in The attached statement.

*Conformément à l'article 12, alinéa 2, de la dite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.*

Annexes  
*Annexes*

Documents returned:  
*pièces renvoyées*

See Request

In appropriate cases, documents establishing the service:  
*Le cas échéant, les documents justifiant de l'exécution:*

Done at Newmarket, Ontario - the 28<sup>th</sup> February 2011  
*Fait à*

Signature and/or stamp  
*Signature et/ou cachet*

TS G. SHAW  
Court Enforcement Officer  
Regional Municipality of York